

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HUMBOLDT BAYKEEPER, et al.,

No. C 06-04188 CRB

Plaintiffs,

ORDER

v.

SIMPSON TIMBER COMPANY, et al.,

Defendants.

The Ecological Rights Foundation, Humboldt Baykeeper, and Californians for Alternatives to Toxics (collectively, “Plaintiffs”) brought this lawsuit against numerous entities who, they allege, are responsible for polluting Humboldt Bay. Now pending before the Court are two motions to dismiss. For the reasons set forth below, the Court hereby DENIES the both motions.

BACKGROUND

Plaintiffs’ complaint focuses on two adjacent parcels of property in Humboldt County that formerly were used in the manufacture of timber and plywood (“the Site”). See Compl. ¶¶ 36-43. According to the complaint, numerous companies have run timber-related businesses on the Site, beginning as early as 1863 and continuing at least until 1984. See id. ¶¶ 30-34. The complaint alleges that in 1991 Defendant Preston Properties acquired the Site, id. ¶ 35, and it identifies Patrick O’Dell as the President of Preston Properties, id. ¶ 20. The

1 complaint further alleges that the Site is currently used for several purposes, including “as a
2 flea market, storage facility, and a building materials distribution center.” Id. ¶ 56.

3 Plaintiffs claim that industrial activity has contaminated the Site. See generally id. ¶¶
4 63-82. Principally, Plaintiffs allege that the contamination is due to the use of a fungicide
5 and wood preservative known as “Woodlife” by the Simpson Timber Company, which
6 owned the Site between 1956 and 1984--a timeframe that includes a period when the Site
7 was owned by a corporate entity that eventually merged with Simpson Timber Company in
8 1963. Id. ¶¶ 33-34, 38-43. The complaint states that Woodlife is a “solution of
9 pentachlorophenol dissolved in mineral spirits.” Id. ¶ 41. It alleges that Woodlife itself is “a
10 known carcinogen, but, more importantly, [contains] much more toxic dioxins and furans.”
11 Id. According to Plaintiffs, these toxins accumulate in organisms to which they are exposed
12 and, even at very low levels of exposure, pose a danger to human health and safety. See id.
13 ¶¶ 76-79 (alleging that these toxins cause “cancer and reproductive harm, and
14 immunological, cognitive, and physical defects in children”).

15 But Plaintiffs do not limit their allegations of environmental wrongdoing to the
16 bygone timber-related activities of the Simpson Timber Company. In addition, they assert
17 that “[t]he sources of pollutants and hazardous waste contaminants at the Site include, but are
18 not limited to, plywood manufacturing activities and ongoing activities relating to the
19 storage, maintenance, and dismantling of vehicles, equipment, and other materials.” Id. ¶ 65
20 (emphasis added). They further allege that the various defendants, including Preston
21 Properties and Patrick O’Dell, have been involved in bungled clean-up activities at the Site.
22 See generally id. ¶¶ 44-55. For instance, Plaintiffs assert that the defendants excavated
23 contaminated soils from the Site, and from properties adjacent to the Site, and then disposed
24 of the soil in a facility that was not approved to accept contaminated waste. Id. ¶¶ 52-53.
25 They also assert that these defendants failed to comply with applicable environmental
26 regulations in their clean-up and disposal efforts. See id. ¶¶ 197-235.

27 Finally, Plaintiffs assert that the various defendants have left the Site in a condition
28 that currently results in “the perpetual discharge of pollutants” into Humboldt Bay. Id. ¶ 55.

1 Their complaint alleges that pollutants at the Site flow from some areas directly into the Bay,
2 see id. ¶ 29, and from other areas indirectly into the Bay via a wetland channel owned by the
3 North Coast Railroad Authority, see id. ¶¶ 25, 27.

4 DISCUSSION

5 Now pending before the Court are two motions to dismiss. The first, filed by
6 Defendant Preston Properties, contests the sufficiency of the entire complaint. The second,
7 filed by Defendant Patrick O'Dell, contests only the sufficiency of the complaint's
8 allegations as to him personally.

9 I. Preston Properties' Motion

10 Defendant Preston Properties contends that the entire case should be dismissed,
11 pursuant to Rule 12(b)(7), due to Plaintiff's failure to join the North Coast Railroad
12 Authority as a necessary or indispensable party. Preston Properties advances two arguments
13 to support this contention, neither of which is persuasive.

14 First, Preston Properties argues that Plaintiff has "fail[ed] to name the actual owner of
15 the property where the alleged penta and dioxins are situate[d] in the ground." Def. Preston
16 Properties Mot. to Dismiss at 5. This argument makes it seem as though Plaintiffs have
17 named the wrong wrongdoer. Even a cursory glance at the complaint, however, dispels that
18 notion. Plaintiffs' theory is not that liability rests wherever the toxins are or may have
19 wandered. Their theory is that the named defendants are responsible for contaminating the
20 Site, for engaging in clean-up and other activities on the Site that have aggravated the
21 problem of contamination, and for violating numerous environmental laws and regulations in
22 the process. The North Coast Railroad Authority is entangled in the case, according to
23 Plaintiffs, only because the pollution caused by the defendants washes or flows off the Site,
24 across a wetland channel owned by that entity, and into Humboldt Bay. Simply because
25 toxic contamination may flow off the Site and onto someone else's property, however, does
26 not make that third party "necessary and indispensable" under Rule 19.

27 Second, Preston Properties argues that Plaintiffs seek relief that cannot be provided
28 without adding the North Coast Railroad Authority as a party. For example, Preston

1 Properties observes that Plaintiff want this Court to “[e]njoin Defendants . . . to characterize,
2 perform a human health and ecological risk assessment, and to remediate all contamination
3 of the Humboldt Bay, the Eureka Marsh, the adjacent wetland channel, the Site, and the
4 ground water beneath the Site.” Compl. ¶ 236(K). Because the defendants have no control
5 over some of these lands--specifically, the wetland channel owned by the North Coast
6 Railroad Authority--Preston Properties argues that Plaintiff has failed to include all necessary
7 parties in the suit.

8 The problem with this argument is that it does not establish the North Coast Railroad
9 Authority as a necessary or indispensable party, at least insofar as Rule 19 is concerned. It
10 merely suggests that Plaintiffs may not be able to obtain some of the relief they seek. The
11 fact that some forms of relief may be unavailable, however, does not mean that “complete
12 relief cannot be accorded among those already parties.” Fed. R. Civ. P. 19(a). To the
13 contrary, the Court finds that it would be able to fashion “meaningful” or “complete” relief
14 between the parties currently involved in this lawsuit, even without the presence of the North
15 Coast Railroad Authority. See United States ex rel. Morongo Band of Mission Indians v.
16 Rose, 34 F.3d 901, 908 (9th Cir. 1994) (“The [plaintiff] may have sought relief beyond any
17 within the power of the federal courts to grant. But such overreaching in the pleadings cannot
18 mean that every [other relevant actor] . . . who might associate himself with [defendant] in
19 the future is a necessary party.”); see also Northrop Corp. v. McDonnell Douglas Corp., 705
20 F.2d 1030, 1043 (9th Cir.), cert. denied, 464 U.S. 849 (1983); Stumpf v. Fidelity Gas Co.,
21 294 F.2d 886, 890-91 (9th Cir. 1961).

22 The Court makes no determination today about whether it would have authority to
23 provide Plaintiffs with any relief involving property owned by the North Coast Railroad
24 Authority--or, for that matter, property belonging to any other entity that is not currently a
25 party to the suit. Cf. Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102,
26 110 (1968) (“Of course, since the outsider is not before the court, he cannot be bound by the
27 judgment rendered. This means, however, only that a judgment is not res judicata as to, or
28 legally enforceable against, a nonparty.”). Nor does the Court now make any determination

1 about the legal effect of a document that has been tendered to the Court in which the North
2 Coast Railroad Authority purports to “submit to this Court’s jurisdiction” for purposes of any
3 relief that the Court may order in the case. The only question currently pending before the
4 Court is whether the case must be dismissed because Plaintiff has failed to add the North
5 Coast Railroad Authority as a necessary or indispensable party. The Court holds that
6 dismissal is not required, and nothing more. To the extent that Plaintiffs have suggested in
7 their filings that the Court simply join the North Coast Railroad Authority as a party, the
8 Court finds that such joinder is unnecessary and inappropriate as a response to the motion to
9 dismiss. If Plaintiffs wish to add the North Coast Railroad Authority as a party themselves,
10 either as a plaintiff or a defendant, they must do so by amending their complaint.

11 **II. O’Dell’s Motion**

12 Defendant Patrick O’Dell does not challenge the sufficiency of the entire complaint.
13 Instead, he contends only that he must be dismissed as a defendant. He argues that Plaintiffs
14 have made no specific allegations of wrongdoing against him as an individual, nor any
15 allegations that would support an attempt to pierce the corporate veil of Preston Properties,
16 the company he runs.

17 O’Dell’s motion assumes that some allegation of independent, individual conduct is
18 necessary for Plaintiffs to sustain a cause of action against O’Dell. Contrary to O’Dell’s
19 theory, however, the Clean Water Act (“CWA”) and the Resource Conservation and
20 Recovery Act (“RCRA”) both permit the imposition of penalties, even criminal penalties,
21 against individuals merely because they are in positions of authority at polluting
22 companies. See 33 U.S.C. §§ 1319(c)(2), (6) (imposing liability on “any person who . . .
23 knowingly violates the CWA, including “any responsible corporate officer”); 42 U.S.C. §
24 6792(a)(1)(A) (imposing liability on “any person . . . who is alleged to be in violation of any
25 permit, standard, regulation, condition, requirement, prohibition, or order which has become
26 effective” pursuant to the RCRA).

27 Indeed, courts consistently have held that individuals whose acts or omissions have
28 led to such pollution may be held responsible individually, notwithstanding the fact that they

1 may have been acting in their capacity as an employee or officer of a company or entity that
2 owns the property in question or conducts business on it. See, e.g., United States v. Iverson,
3 162 F.3d 1015, 1022-26 (9th Cir. 1998) (holding that a former officer and current
4 “consultant” of a company could be held liable as a “responsible corporate officer” for
5 pollution that resulted from the dumping of hazardous wastewater); Zands v. Nelson, 779 F.
6 Supp. 1254, 1264-65 (S.D. Cal. 1991) (holding that numerous individuals could be held
7 liable as alleged “contributors” to pollution caused by leaks in underground gas containers,
8 including “individuals who operated the pumps during which time the gas allegedly leaked,
9 and individuals responsible for the installation of the piping and pumps for the gasoline tanks
10 that allegedly leaked”).

11 Next, O’Dell argues that he has had no actual involvement with any activity on the Site
12 that may have caused its contamination. O’Dell thus suggests that this Court should convert
13 his motion to dismiss into a so-called “speaking motion” for summary judgment, pursuant to
14 Rule 56(f), and that the Court should rely upon his affidavit, in which he asserts that he has
15 never had any involvement as an individual in any activity that might have caused the alleged
16 contamination of the Site. O’Dell’s contentions are in direct conflict with the allegations set
17 forth in the complaint and therefore cannot be sustained. The Complaint clearly alleges that
18 O’Dell is the leader of a corporate entity that is subject to certain requirements under federal
19 environmental laws and that the company has failed to meet those requirements. It also
20 alleges that O’Dell himself has been involved in clean-up activities that have exacerbated the
21 deleterious effect of contamination at the Site on the surrounding environment. To the extent
22 that O’Dell is simply challenging the allegations set forth in the complaint, a motion to
23 dismiss is not the proper tool to mount such a challenge.

24 At oral argument, O’Dell raised one final argument regarding the sufficiency of the
25 claims against him. He suggested that the complaint is defective because it fails to allege
26 that he knowingly or intentionally violated applicable environmental laws. See Iverson, 162
27 F.3d at 1022 (“The CWA holds criminally liable ‘any person who . . . knowingly violates its
28 provisions.” (quoting 33 U.S.C. §§ 1319(c)(2)) (emphasis added). Contrary to O’Dell’s

1 argument, however, the complaint does make adequate allegations regarding his mental state.
2 For example, the complaint alleges that O'Dell was involved in the "limited investigations of
3 soil, groundwater, and surface water contamination at the Site." Compl. ¶ 45. The complaint
4 further alleges that regional environmental authorities conducted extensive tests on the Site
5 and issued an abatement order requiring certain remedial steps to be taken there--all while
6 the Site was owned by Preston Properties and O'Dell was its President. Id. ¶¶ 46-47. The
7 complaint also specifically alleges that O'Dell himself has been involved in various clean-up
8 activities at the Site, including the removal of "the Woodlife distribution pipeline" and the
9 excavation and disposal of contaminated soil. Id. ¶¶ 51-53. Finally, the complaint alleges
10 that O'Dell and his company currently use the Site in a manner that "exposes large numbers
11 of people to the chemicals that are, and have been in the past, used on the Site" and leads to
12 the run-off of various toxic chemicals. Id. ¶¶ 56-62.

13 The Court finds that these allegations are "sufficient to warrant a finding by the trier
14 of the facts that the defendant had, by reason of his position in the corporation,
15 responsibility and authority either to prevent in the first instance or promptly to correct, the
16 violation complained of, and that he failed to do so." Iverson, 162 F.3d at 1024 (quoting
17 United States v. Park, 421 U.S. 658, 673-74 (1975)). Indeed, if proven, these facts would
18 readily support a jury's inference that O'Dell acted at relevant times with the requisite state
19 of mind. Although the complaint does not employ the magic words "knowingly" or
20 "intentional," such magic words are unnecessary. It is enough for pleading purposes that the
21 complaint set forth facts from which a reasonable jury could find that O'Dell acted with
22 knowledge. While there are numerous cases that stand for the proposition that a plaintiff's
23 case cannot rest merely on "purely conclusory allegations . . . with no concrete, relevant
24 particulars" concerning a defendant's intent, Forsberg v. Pac. Nw. Bell Tel. Co., 840 F.2d
25 1409, 1419 (9th Cir. 1988), this Court is aware of no case, and O'Dell point to none, that
26 stands for the converse proposition that a plaintiff's complaint must contain a conclusory
27 allegation of knowledge, even though it alleges specific facts that, if proven, would be more
28 than sufficient to support a finding that the defendant acted with the requisite state of mind.

1 Indeed, even in the criminal context, and in other contexts where there are heightened
2 pleading requirements, the Ninth Circuit has not erected such a stringent requirement that the
3 plaintiff invoke a specific allegation of intent, at least where, as here, the complaint clearly
4 puts the defendant on notice that he is alleged to have committed acts that suggest he
5 possessed the requisite mental state. See United States v. Davis, 336 F.3d 920 (9th Cir.
6 2003) (holding that there was no error where “the indictment [did] not contain a specific
7 verbal elaboration of criminal intent” because “the requisite intent [was] unambiguously
8 found in the words of the indictment”); In re Read-Rite Corp., 335 F.3d 843,846 (9th Cir.
9 2003) (noting that a plaintiff satisfies the heightened pleading requirements under the Private
10 Securities Litigation Reform Act by alleging specific facts through which a reasonable jury
11 could infer that a defendant acted with the requisite scienter). If the government can satisfy
12 the notice requirements in a criminal case, and if shareholders can satisfy the heightened
13 pleading requirements of the PSLRA, by setting forth specific allegations that, if proven,
14 would give rise to a strong inference that the defendant acted with the requisite state of mind,
15 the Court is satisfied that Plaintiffs have satisfied the much less rigorous notice pleading
16 requirements of Rule 8 in this case. In short, the Court concludes that O’Dell has put forth
17 no reason why the complaint against him is insufficient.

18 CONCLUSION

19 Because the North Coast Railroad Authority is not a necessary or indispensable party
20 under Rule 19, the motion to dismiss filed by Defendant Preston Properties is hereby
21 DENIED. Because the complaint alleges facts sufficient to hold Defendant Patrick O’Dell
22 liable as a “responsible corporate officer” under applicable environmental laws and sets forth
23 specific facts from which a reasonable jury could conclude that he acted knowingly, his
24 motion to dismiss is also DENIED. If Plaintiffs wish to add the North Coast Railroad
25 Authority as a party to this case, they may file an amended complaint not later than Friday,
26 December 22, 2006.

27 **IT IS SO ORDERED.**
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United States District Court
For the Northern District of California

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Dated: December 8, 2006



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE